



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill #	SB0402	Title:	Clarify property rights for which just compensation is due when taken
Primary Sponsor:	Peterson, Jim	Status:	As Amended

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Significant Local Gov Impact | <input type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
General Fund	----- Fiscal Impact Cannot be Reasonably Determined -----			
Revenue:				
General Fund	----- Fiscal Impact Cannot be Reasonably Determined -----			
Net Impact-General Fund Balance:	=====	=====	=====	=====

Description of fiscal impact:

SB 402 adds eight new compensable terms to the acquisition of property or property interests that have been subject to government takings. The bill will generate two types of fiscal impacts. One will be new types of compensation for the property or interest taken. The other will be the cost to determine the value of the property or interest taken. The fiscal impact of this bill cannot be reasonably determined.

FISCAL ANALYSIS

Assumptions:

Department of Transportation (MDT)

- MDT has the need to acquire an average of 400 parcels of real property per year.
- About one in five involve a business when farming and ranch operations are included.
- Each business parcel will need to be compensated under new Section 1(1) f-m. The terms used in f-m are undefined in the context of appraisals and will be very difficult to assign a value to.
- Two approaches were used to estimate compensation costs. 3 out of 33 states responding to a survey allow compensation described in the bill. One state spends about 6% of their right-of-way (R/W) budget on loss of business. $6\% \times \$12M$ (MDT R/W costs) = \$720,000. Another state spends approximately \$3,000 per parcel. $80 \text{ parcels} \times \$3,000 \text{ per parcel} = \$240,000$.

5. The ambiguity in the terms will push many normal right-of-way acquisitions to condemnation. MDT averages 7-8% or 30 condemnations per year, most of which are settled prior to trial. 80 parcels will be affected with the new section. 25% - 50% will not be resolved through the normal acquisition process and will end up being resolved throughout a legal process. Therefore, it is assumed 30 new condemnations per year will be generated.
6. Each parcel processed through the MDT Legal Office averages between \$5,000 and \$15,000 if it is settled early through negotiations. Parcels that go to trial generate a few thousand to several hundred thousand dollars depending upon complexity. For purposes of this fiscal note, it is assumed that it would cost \$25,000 per parcel to process it through MDT Legal. 30 parcels X \$25,000 per parcel = \$750,000 per year.
7. There will be no net fiscal impact as funds currently used to build roads and bridges will be redirected to expenses incurred in right-of-way acquisition.

Department of Fish, Wildlife and Parks (FWP)

8. FWP assumes there could be claims by private property stakeholders requesting just compensation for losses incurred by what the stakeholder may believe is a result of an FWP regulation. FWP regulations, rules, and statutes may restrict uses on private property that have economic impacts to the landowner. The possibility that the restrictions or regulations could decrease private property values cannot be reasonably determined, but will likely result in significant financial burdens to FWP.

Department of Justice

9. It is impossible to predict the number and scope of claims for damaged or taken protectable private property interests that could be made against the state under SB 402. The Department of Justice would utilize the currently available Major Litigation fund appropriation to cover the legal costs that may arise after passage of this bill. Therefore, the department concludes that there is no additional fiscal impact for the provision of legal services as a result of this bill.

Effect on County or Other Local Revenues or Expenditures:

1. Local governments will be effected similarly to MDT but at a smaller magnitude.

Technical Notes:

1. The language in Section 1 (1) f-m is vague and undefined in terms of current appraisal practice. It will be difficult to agree on costs since no protocol for calculating cost exists.

Sponsor's Initials

Date

Budget Director's Initials

Date